

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

EMPOWER OVERSIGHT
WHISTLEBLOWERS & RESEARCH,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

No. 1:23-CV-0095 (LMB/JFA)

**DEFENDANT’S MOTION FOR EXTENSION OF TIME TO RESPOND TO
PLAINTIFF’S COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 6(b), Defendant U.S. Department of Justice (“DOJ”) respectfully moves for a thirty-day extension of time, until March 27, 2023, to file its response to Plaintiff’s complaint for relief under the Freedom of Information Act (“FOIA”), *see* Dkt. 1. The good cause for this motion is as follows:

1. Plaintiff Empower Oversight Whistleblowers & Research filed its complaint on January 20, 2023. Dkt. 1. It served the U.S. Attorney’s Office by certified mail in an envelope date-stamped January 25, 2023, and received on January 30, 2023.

2. DOJ’s response to Plaintiff’s complaint is thus currently due on February 24, 2023, pursuant to 5 U.S.C. § 552(a)(4)(C) and Local Rule 4(A).

3. DOJ seeks an additional thirty days to respond to the complaint in order to propose a processing schedule for any records potentially responsive to Plaintiff’s request.¹ The complaint

¹ “Processing” refers to DOJ’s initial review of potentially responsive records identified during the search process and may include the sending of those records to other agencies or components having equity in the records for consultation. A “processing schedule” refers to a commitment as

alleges that DOJ has failed to produce records in response to two FOIA requests directed to two DOJ offices, the Office of Information Policy (“OIP”) and the National Security Division (“NSD”). OIP and NSD are still in the process of conducting a search for records potentially responsive to Plaintiff’s FOIA requests, and an additional thirty days are needed for OIP and NSD to continue to search for records potentially responsive to those requests. If any such potentially responsive records are located by OIP, OIP anticipates becoming able to negotiate a processing schedule within the additional thirty days Defendant requests. NSD expects to complete its search and responsiveness review soon, although it cannot yet project a completion date, and would then be in a position to negotiate such a processing schedule as well.

4. In the event that potentially responsive records are identified in the search process, once processing is complete, DOJ would then be able to coordinate release of any responsive records that are not exempt from disclosure under applicable law. And to the extent that any records that DOJ releases are satisfactory to Plaintiff, it may be possible to obviate, or at least narrow, the need for further litigation.

5. Accordingly, DOJ respectfully requests a thirty-day extension of time, until March 27, 2023, to file its response to Plaintiff’s complaint.

6. Undersigned counsel conferred with Plaintiff’s counsel regarding the relief sought in this motion. Plaintiff’s counsel has informed the undersigned counsel that Plaintiff opposes that relief but would consent to a fourteen-day extension of the deadline to respond to the complaint. While Defendant anticipates being in a position to negotiate a processing schedule as to any potentially responsive records located by OIP within thirty days, Defendant does not anticipate

to a schedule for processing a specified minimum amount of potentially responsive records, with the goal of subsequent release of any non-exempt, responsive records.

being able to do so within fourteen days based on the time needed for OIP to complete the initial search for any potentially responsive records.

7. A proposed order is attached for the Court's convenience.
8. Defendant waives hearing on this motion.

Dated: February 23, 2023

Respectfully submitted,

JESSICA D. ABER
UNITED STATES ATTORNEY

By: _____ /s/
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